

ORDINANCE NO. _____

AN ORDINANCE OF CLAY COUNTY, SOUTH DAKOTA, AMENDING ORDINANCE NO. 2013-04, BEING THE 2013 REVISED ZONING ORDINANCE FOR CLAY COUNTY BY ADDING CHAPTER 3.16, GENERAL DISTRICT REGULATIONS, UTILITY-SCALE SOLAR ENERGY CONVERSION SYSTEMS (USES); AND AMENDING CHAPTER 4.05.01, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, NRC: NATURAL RESOURCE CONSERVATION; CHAPTER 4.05.02, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, A-1: AGRICULTURAL DISTRICT; CHAPTER 4.05.03, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, RR: RURAL RESIDENTIAL DISTRICT; CHAPTER 4.05.04, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, C-1: COMMERCIAL DISTRICT; CHAPTER 4.05.05, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, I-1: LIGHT INDUSTRIAL DISTRICT; CHAPTER 4.05.06, DISTRICTS AND BOUNDARIES, DISTRICT REGULATIONS ESTABLISHED, I-2: GENERAL INDUSTRIAL DISTRICT; AND CHAPTER 2.02, DEFINITIONS, DEFINITIONS.

BE IT ORDAINED BY CLAY COUNTY, SOUTH DAKOTA:

Section 1: That the 2013 Revised Zoning Ordinance for Clay County is hereby amended to include the following:

Section 3.16 Utility-Scale Colar Energy Conversion System (USES)

- A. Intent. The intent of Utility-Scale Solar Energy Conversion Systems (USES) regulations is to encourage the development of alternative energy sources while protecting the health, safety, and welfare of the public.
- B. Applicability. It shall be unlawful for any person, firm, or corporation to erect, construct in place, or place any USES without first receiving a permit(s) from the Zoning Administrator or authorized agent of Clay County. Nor may any person, firm, or corporation alter, modify, transform, add to, or change in any way an existing USES without first receiving a permit(s) from the Zoning Administrator or authorized agent of Clay County.
- C. General Standards.
 - 1. USES shall be a conditional use only on lands zoned A-1 Agricultural Zoning District.

2. The applicant must submit evidence that the solar power farm can connect to the off-site power transmission system, and evidence of electric power purchase contracts and power transmission contracts, or documentation that the power will be utilized on-site.
3. Public Roads. The permittee shall obtain road haul/maintenance agreements with the applicable township, county, or state agency. Such agreements shall be part of the Conditional Use Application.
4. Private Roads. The permittee shall promptly repair private roads, easements, or lanes damaged when moving equipment or when obtaining access to the site unless otherwise negotiated, in writing, with the affected landowner.
5. Other Standards and Codes. All USES shall be in compliance with any applicable local, state, and federal regulatory standards for solar energy systems.

D. Application, Conditional Use. The Conditional Use Permit application must be accompanied by the following:

1. Owner, managers, management companies, and all similar entity names, addresses, and telephone numbers;
2. Legal description of the site(s);
3. Copies of all road haul/maintenance agreements, private road agreements, and interconnection applicants, if any;
4. Evidence that the applicant is the property owner involved or has written permission from the owner to make such an application;
5. Documentation of specific information on the type, size, height, materials, system ratings, rated power output, performance, and safety of the proposed USES and its electrical transmission equipment;
6. Anticipated construction schedule;
7. Certificate of Insurance for the denomination approved within the Decommissioning Plan;
8. State the estimated valuation of the proposed work;
9. Preliminary site plans per Section 11.04 shall be provided at the time of the application, with final plans to be provided prior to construction, showing the ability to meet designated setback requirements, including maps showing measured distances and:
 - i. Physical dimensions and locations of the property, existing structures, and proposed structures;
 - ii. Location of electrical lines and facilities;
 - iii. Existing topography;

- iv. Proposed grading and use of natural vegetation; and
 - v. Proposed easements, if any.
 - vi. **Any recorded drainage easements.**
10. Any other information contained in the application and requested by the County Zoning Administrator.

E. Additional Requirements.

- 1. A Conditional Use Permit (CUP) is required, and a Solar Energy System, Utility Scale (USES) facility is only eligible in the A-1 Agricultural Zoning District.
- 2. Setbacks. The following table lists all applicable setbacks for USES. **The required minimum distance from any structure/use to the USES lot line. Setbacks shall be measured from the USES lot line a to the structure/use as identified on the following “Setback Chart”.**

Category	Setback
Dwellings, Churches, Schools, Businesses,	300 feet
Property Lines	50 feet
Federal, State, & County Road ROW	50 feet
Designated 100 Year Flood District	Prohibited
Spirit Mound Park	1 mile-1320 feet
Designated Federal, State, or County Park	125 feet
Public Access Hunting Areas	125 feet
Incorporated Municipality Limits	125 feet

Note: Any authorized landowner that is within the separation distance may waive the separation distance through a written instrument to be filed with the Clay County Register of Deeds. The waiver shall run with the land. However, setbacks from property lines are not eligible for a release.

- F. Safety/Access. An appropriate security/livestock fence shall be placed around the perimeter of the solar power plant, if appropriate or deemed necessary. The height and material of the security/livestock fence will be established during the Conditional Use Permit process.
- G. Glare. Glare from USES to adjacent or nearby properties shall be minimized. Steps to minimize glare may include selective placement, selective orientation of the panels, installation of a non-reflective coating, appropriate screening, or other appropriate method. A glare study must be conducted prior to the issuance of a Building Permit. The purpose of the glare study is to identify potential impacts and mitigation strategies. Once installed, if the USES creates glare onto neighboring properties or right-of-ways and the

County determines that such glare may constitute a nuisance, the County will require a more detailed glare study, prepared by a third-party consultant mutually acceptable to the County and the permittee to identify additional actions or screenings that may be required to substantially eliminate or block the glare from entering adjacent or nearby properties or public right-of-ways. **Glare level testing shall not be repeated in a representative area during any two (2) year period unless operational or maintenance changes result in a reasonable assumption of higher glare levels. It shall be the responsibility of the owner/operator of the USES project to pay all costs associated with measuring glare levels as required herein.**

- H. Noise. The noise level of the USES shall not exceed fifty-five (55) dBA, average A-weighted sound pressure level effects at existing occupied buildings. In the event a noise complaint is filed with the County, noise level measurements shall be made with a sound level meter using the A-weighting scale, in accordance with standards promulgated by the American National Standards Institute. A L90 measurement shall be used and have a measurement period no less than ten (10) minutes unless otherwise specified by the **Zoning Administrator Board of Adjustment**. Noise level testing shall not be repeated in a representative area during any **two (2)** year period unless operational or maintenance changes result in a reasonable assumption of higher noise levels. It shall be the responsibility of the owner/operator of the USES project to pay all costs associated with measuring sound levels as required herein.
- I. Signage. All signs for USES shall conform to Section 3.05 On-Premise Signs, Section 3.06 Off-Premise Signs, and NERC North American Electric Reliability Corporation's 693 standards.
- J. **Drainage. Tile, subsurface, and surface drainage shall maintain the original alignment gradient and water flow to the greatest extent possible.**
- K. **Lighting. All lighting for USES facilities shall be downcast lighting.**
- L. Decommissioning. The CUP application shall include a decommissioning plan with the following information:
 - 1. Cost Responsibility. The owner or operator of a project is responsible for decommissioning that facility and for all costs associated with decommissioning the facility and associated facilities. The decommissioning plan must clearly identify the responsible party.
 - 2. Useful Life. A project is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Planning Commission for approval a plan outlining the steps and schedule for returning to the project to service within twelve (12) months of submission.
 - 3. Decommissioning Period. The facility owner or operator must begin decommissioning a project facility within eight (8) months after the time the USES and USES facilities reach the end of their useful life. The

decommissioning timeline must be completed according to the following chart:

Size	Acreage	Decommissioning Time
Small	10-300	12 months
Medium	301-600	18 months
Large	600+	24 months

4. Decommissioning Plan. Prior to approval of a CUP for a USES facility, the facility owner or operator must file the following documents with the Zoning Administrator:
 - i. The estimated decommissioning cost;
 - ii. USES and for restoring each road haul, in current dollars at the time of the application, for the proposed facility;
 - iii. A decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time.

The Planning Commission will review a plan filed under this section and shall approve or disapprove the plan in conjunction with the CUP application. The Planning Commission or Zoning Administrator may, at any time, require the owner or operator of a project to file a report describing how the project owner or operator is fulfilling this obligation.

5. Decommissioning Requirements. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the project. The landowner may request in writing that the access roads be retained. Decommissioning and site restoration include signing appropriate road haul agreements for the decommissioning process. Decommissioning shall include dismantling and removal of all USES-related equipment, foundations, buildings, and ancillary equipment to a depth of forty-two (42) inches. Decommissioning shall include removal of surface road material and restoration of the roads and USES sites to substantially the same physical condition that existed immediately before project construction.
6. Financial Assurance. Before construction begins on the project, the facility owner shall provide the Zoning Administrator a certificate of

insurance, including either a performance or surety bond, which covers the total cost to decommission the facility. The certificate of insurance shall be renewed, and a copy submitted to the Zoning Administrator each year the facility is in operation.

7. Failure to Decommission. If the project facility owner or operator does not complete decommissioning, the County Commission may take such action as necessary to complete decommissioning, including forfeiture of the financial assurances. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assignees, that the County Commission may take such action as may be necessary to decommission a project facility and seek additional expenditures necessary to do so from the facility owner.

Section 2: That Chapter 4.05.02 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Conditional Use to the A-1 Agricultural District:

Utility-Scale Solar Energy Conversion Systems (USES)

Section 3: That Chapter 4.05.01 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the NRCL Natural Resource Conservation District:

Solar Energy System, Building Mounted (BMSES)

Section 4: That Chapter 4.05.02 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the A-1: Agricultural District:

Solar Energy System, Building Mounted (BMSES)

Section 5: That Chapter 4.05.03 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the RR: Rural Residential District:

Solar Energy System, Building Mounted (BMSES)

Section 6: That Chapter 4.05.04 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the C-1: Commercial District:

Solar Energy System, Building Mounted (BMSES)

Section 7: That Chapter 4.05.05 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the I-1: Light Industrial:

Solar Energy System, Building Mounted (BMSES)

Section 8: That Chapter 4.05.06 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following Permitted Use to the I-2: General Industrial District:

Solar Energy System, Building Mounted (BMSES)

Section 9: That Chapter 2.02 the 2013 Revised Zoning Ordinance for Clay County is hereby amended to add the following definitions:

SOLAR ENERGY: Electromagnetic energy transmitted from the sun (solar radiation).

SOLAR ENERGY SYSTEM (SES): A device or structural design feature intended to provide for the collection, storage, and distribution of solar energy, thermal or electromagnetic, for heating or cooling, electricity generating, or water heating.

SOLAR ENERGY SYSTEM, BUILDING MOUNTED (BMSES): A device or structural design feature intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generating, or water heating. The primary purpose or use of the BMSES shall be customary & clearly incidental to the principal use and only mounted to the roof or exterior sidewall of an accessory building, building, residential building, or detached building.

SOLAR ENERGY SYSTEM, UTILITY-SCALE (USES): Any non-building mounted SES with the primary purpose of delivering solar energy for heating/cooling, electricity generating, or water heating and distributing energy to the end user by electric utilities or power systems. USES can also be referred to as a Solar Farm.

Dated this _____ day of _____, 2023.

Chairman, Clay County Board of Commissioners

ATTEST:

Auditor

(SEAL)

First Reading: _____

Second Reading and Adoption: _____

Publication Date: _____

Effective Date: _____